

offering a toll free 888 code to augment the diminishing available 800 numbers. I inquired of the Sprint representative as to whether Genesis could reserve the number 888-256-7766 (888-BLOSSOM). I was informed by the Sprint representative that Sprint had previously collected a list of customers that were interested in reserving 888 toll free numbers which corresponded with their respective 800 toll free numbers but that the list was being compiled for the purpose of informing the Federal Communications Commission ("FCC" or "Commission") as to the number of 800 customers interested in reserving their corresponding 888 number. I requested that Genesis be added to the list. The representative indicated that the list had already been submitted to the FCC and that Sprint was no longer adding names to the list. Prior to my conversation with the Sprint representative, I was not aware that the FCC had initiated a proceeding concerning the creation of an 888 toll-free service.

4. On the same day that I spoke with the Sprint representative, I contacted the FCC and spoke at length with Brad Wimmer, an FCC attorney. The telephone call lasted approximately 30 to 40 minutes. I relayed to Mr. Wimmer my conversation earlier in the day with the Sprint representative and my concerns of being potentially excluded from the 888 reservation list. Mr. Wimmer explained to me that the FCC had not reached any decision in the 888 matter nor instituted an order with respect to the implementation of the service. Mr. Wimmer further indicated that if the carriers were compiling a list of customers interested in reserving numbers in the prospective 888 service he was not aware

6. Following up on Mr. Wimmer's suggestion, every week or two weeks during the period of early December 1995 and through January 26, 1996 I contacted several carriers including my own carrier, LDDS (who I contacted on approximately six occasions), to inquire about the status of reserving an 888 number. I was informed each time that I called, that 888 numbers could not be reserved as yet, as the FCC had not yet issued its decision. In each of the calls, including my calls to LDDS, I also inquired about reserving the corresponding 888 number to 800-BLOSSOM and I was routinely informed that lists were previously compiled and that Genesis' request to reserve 888-256-7766 could not be added to the lists since the lists were cutoff and only compiled to inform the FCC as to the interest in the reservation of an existing 800 customer of a corresponding 888 number. The carriers also informed me that the FCC had not reached a decision relative to the 888 service but that a decision was expected in March, 1996. At no time was it portrayed to me by any of the carriers I contacted, including Genesis' carrier, LDDS, that the previously compiled lists would be used or utilized as the list for the inclusion of numbers to be protected once the Commission issued its decision.

7. Based on my conversation with Mr. Wimmer I expected that the FCC, which had not yet issued a decision in the 888 service, would not utilize the reservation lists of vanity 800 subscribers seeking to replicate their number in the 888 service previously compiled by the carriers. As previously stated, such lists I had been told by the carriers were already cutoff by the carriers (and

not by any FCC imposed deadline) and were purportedly compiled by such carriers for the express purpose of informing the FCC of the interest of existing 800 subscribers in the proposed 888 service.

8. On January 26, 1996, unaware of the Commission's release on January 25, 1996 of its *Report and Order* in the 888 toll free service matter, I continued checking with carriers as suggested by Mr. Wimmer earlier. From my home I contacted AT&T to inquire if I could reserve an 888 number and was informed that I could not. I also inquired if my 800-BLOSSOM number could be protected from someone else reserving the number with an 888 access code. The representative's response was that no decision had been reached by the FCC with respect to 888 service and that since the FCC had been on a lengthy furlough, it was backlogged. According to the representative, AT&T had been informed by the FCC that it would delay its decision regarding the 888 service until April. The AT&T representative appeared intelligent and well informed with respect to the 888 service and consequently, I did not immediately double check this information with any other carrier or the FCC.

9. In early February I was scheduled to leave the country on a two-week trip with my family and in anticipation of this trip, on February 5, 1996, I contacted AT&T again and spoke with a representative named Scott. I again inquired about the ability to reserve an 888 number and was informed that I would not be able to reserve an 888 number until February 10, 1996. I also inquired about replicating Genesis' existing 800-BLOSSOM in the 888 service and was informed for the first time that the period for reservation

had passed, that February 1, 1996 was the deadline to request protection of an 800 number. Needless to say, I was taken aback by this information and cancelled my travel plans. My family has since returned from the trip I was to take with them.

10. After my conversation with AT&T, I immediately contacted the FCC and spoke with Ms. Irene Flannery (212/418-2373). I explained to Ms. Flannery that in my prior call to AT&T, I was informed for the first time that the period for seeking to reserve my existing 800-BLOSSOM number on a replication list in the proposed 888 service had passed without my company or me being notified or contacted by Genesis' carrier or its "RespOrg" (a term I was not aware of previously). Ms. Flannery stated to me that the FCC's order speaks for itself and that she would not advise Data Management Services, Inc. ("DSMI") or a Responsible Organization ("RespOrg") one way or another on adding my request to the replication table. Ms. Flannery further stated that the FCC made its decision to extend the polling of customers to be added to the replication list for one week since the SMS/800 Number Administration Committee ("SNAC") had assured the FCC that the carriers had adequately polled all their customers over the previous three to four months. I informed Ms. Flannery that based on my experience of having never been notified or polled by Genesis' carrier and despite repeated efforts on my part to be added to a list which I was consistently informed was not an FCC authorized replication list and was being compiled only for FCC informational purposes only, the SNAC assurance was false and that

a lot of people will be upset. I asked Ms. Flannery if there was any way for the FCC to authorize an addition to the list. Ms. Flannery reiterated that the order speaks for itself and that the only reason the FCC established the February 1, 1996 deadline for replication set asides was to permit the inauguration of the 888 service on March 1, 1996, the date demanded by the carriers. She also indicated that DSMI would need the period of February 1st to February 8th to complete the replication list in order to remove the numbers which will be "unavailable" from all other numbers which would be available for early reservation scheduled to commence on February 10th. Ms. Flannery indicated that I should contact DSMI for further information.

11. After my conversation with Ms. Flannery, I immediately contacted DSMI and spoke to Michele Wade. Ms. Wade gave me the primary contact names of major RespOrgs. She also informed me that DSMI could not accept any other requests for being included on the 888 replication list. I informed Ms. Wade that it was critical for Genesis to have its 800 number included on the replication list. Ms. Wade apologized but stated that unless the FCC directed DSMI to include Genesis 800 number on the list, DSMI could not add anyone to the list.

12. Following my conversation with Ms. Wade I contacted MCI, a RespOrg, and spoke with Ms. Linda Opacic. I had been informed by Ms. Wade that Ms. Opacic was the head of SNAC. Ms. Opacic conferenced Ms. Flannery from the FCC. Both Ms. Opacic and Ms. Flannery took the position that the FCC's Order does not allow a

RespOrg to submit a request for replication beyond the February 1, 1996 deadline. Ms. Flannery further stated that the FCC would rule on a request from Genesis to be added to the list but that she doubted if a RespOrg submitted a request to DSMI, DSMI would accept a request to add a number to the replication list. Ms. Flannery reiterated that the FCC Order speaks for itself and that the FCC would probably not alter its decision. I then requested Ms. Opacic to prioritize my request for 888-256-7766 so that when the early reservation period opened on February 10, 1996 at 12:01 EST, it would be one of the first requests made. Ms. Opacic informed me that I would need to speak to Larry Lee at MCI. I placed a call to Larry Lee and left a message for him to call me.

13. At the end of my conversation with Ms. Opacic and Ms. Flannery, I contacted Sprint and spoke with Ms. Susie Cotter. I requested that Sprint prioritize my reservation request for 800-256-7766 and she informed me that Sprint would and that Sprint would contact the company that had the reservation request for the number to notify them that Sprint was nullifying the request in favor of Genesis' request. Ms. Cotter indicated that Sprint was sympathetic to customers like Genesis that had not been notified of the FCC's "hasty" decision. Ms. Cotter requested proof that 800-256-7766 belonged to Genesis and I provided it.

14. Immediately following my call to Sprint, I called Sonja Coburn with LDDS, Genesis' carrier for its 800-BLOSSOM number, and spoke with Ms. Coburn's assistant Laurie Whitten. Ms. Whitten informed me that LDDS initial replication schedule was as follows:

First Cutoff: November 30, 1995
Second Cutoff: January 5-12, 1996
Third Cutoff: January 25-February 1, 1996.

Ms. Whitten stated that LDDS had approximately 10 to 15 customers, who were not notified by LDDS and had become aware of the February 1, 1996 replication deadline. I informed Ms. Whitten that LDDS needed to place Genesis on the replication list. Ms. Whitten indicated that LDDS was working on submitting requests to DSMI that LDDS received prior to the February 1, 1996 deadline but which LDDS did not timely submit to DSMI, however, I would have to speak to Sonja Coburn concerning this matter. I requested Ms. Whitten to prioritize my request for 888-256-7766 and place my request to the front of LDDS' requests for submission on February 10, 1996.

15. At approximately 5:45 p.m. P.S.T. on February 5, 1996, Ms. Opacic from MCI left a message for me that MCI already had a reservation request for 888-256-7766.

16. On the morning of February 6, 1996, I called Michele Wade at DSMI. I requested to be provided with a complete listing of all RespOrgs so that I could notify them to reserve 888-256-7766. I also requested the necessary information to permit Genesis to become a RespOrg by Friday, February 9, 1996. At this point, I felt that becoming a RespOrg myself may be the only way I would have to successfully access the number, notwithstanding my understanding that the biggest RespOrgs utilized sophisticated equipment which gives them an advantage over the smaller RespOrgs in securing reservations. Ms. Wade indicated that it was possible

to become a RespOrg by Friday, indicating that I needed to complete an application and that I should contact Number Administration Service Center ("NASC") immediately to set up access so no problems would arise once the application to access the system was approved. Ms. Wade indicated that the most difficult part of the process was getting on line once the application is approved. Ms. Wade provided me with NASC's number.

17. [As part of the application process to become a RespOrg, Genesis was required to secure an insurance binder. I was in Portland, Oregon when I became aware of this process, ready to embark on my scheduled trip, and from Portland I contacted two insurance agents to work on putting together a \$2 million dollar binder. The binder was air-expressed from an agent in Medford, I picked it up at the airport counter of Horizon Airlines and went from there to catch a red-eye flight that left Portland at approximately 11:35 PST time so that I could arrive in New Jersey on the morning of February 9th at the offices of DSMI.]

18. Before I contacted NASC following my call with Ms. Wade, I made a call to MCI and spoke with Ms. Opacic who indicated to me that if I was successful in having MCI's Larry Lee prioritize Genesis' reservation request and honor it over the request MCI previously received, she would not override his decision.

19. After my call with Ms. Opacic, I contacted NASC and spoke with Keith Meyer. Mr. Meyer explained the proposed reservation process, including how the prefixes would be released during the 10-to-15 minute period after 12:01 a.m. on February 10, 1996. Mr.

Meyer indicated that I could call him in order to determine at what precise time the 256 prefix would be released. He further indicated to me that he, along with three to four other operators would be typing in the prefixes by ranges, releasing them over the 10-to-15 minute period. In order for him to assist me, Mr. Meyer informed me that I needed to complete the RespOrg application process so that I would be provided with a logon code. He also informed me to speak with Bernadette, in order to get a tutorial code to test the system and to familiarize myself with it since new users have a more difficult time accessing the system. According to Keith Meyer, Bernadette handles Keith's requests to submit requests for logon codes to Tommy Owens of the NASC.

20. I immediately spoke to Bernadette at NASC following my discussion with Keith Meyer. I requested her to submit my request for a tutorial logon and smart card logon in anticipation of approval of Genesis' RespOrg application. I informed her that I did not intend to access the live database system until Genesis' application was approved and that I would return the tutorial in the event Genesis' application was not approved. I explained that it was critical that I be able to access the database after midnight on Friday without any problems and that I was not asking anyone to "break any rules" since I was only asking to access the tutorial database so I could familiarize myself with the system. Bernadette informed me that the NASC would not permit me to access the tutorial database or any other database until Genesis' application was approved.

21. On the afternoon of February 6, 1996, I contacted Johnni Bond of AT&T requesting that AT&T preempt any prior requests for 888-256-7766. Ms. Bond indicated that my request would be nearly impossible. It would require contacting all AT&T sales representatives as AT&T was not maintaining a centralized database for 888 reservation requests.

22. Following up on my conversation with Laura Whitten of LDDS on February 5, 1996, I contacted Sonja Coburn of LDDS on February 6, 1996 to request that LDDS request DSMI to place Genesis' 800-256-7766 number on the replication list. Ms. Coburn stated that the replication request deadline had passed. I inquired about the status of the customers who had timely submitted requests to LDDS which were not timely submitted by LDDS to DSMI. Ms. Coburn said Genesis did not qualify for that submission list. She indicated that she would speak to LDDS legal counsel concerning my request to have a priority reservation for 888-256-7766 upon the commencement of the February 10, 1996 reservation period. I was never informed whether Ms. Coburn and LDDS were successful in getting customer requests on the DSMI replication list after the deadline of customer requests which had been timely submitted to LDDS but were not timely submitted to DSMI by LDDS.

23. On the morning of February 7, 1996, I contacted Lynn Sawicki of MCI, the person Larry Lee of MCI had passed Genesis' priority request on, to request that MCI prioritize Genesis' request for 888-256-7766 (notwithstanding the fact that MCI had already received a reservation for the number). Mr. Sawicki

indicated that he would speak with MCI's attorneys and get back to me. Later in the morning I received a message from Johnni Bond of AT&T indicating that AT&T would not preempt any reservation requests that it received.

24. On February 7, 1996 and February 8, 1996 I left messages for Sonja Coburn to return my earlier call concerning my request to LDDS to prioritize the reservation for 888-256-7766 on Genesis' behalf. On February 7, 1996, I received a message from Larry Lee of MCI indicating that MCI could not help in prioritizing Genesis' request nor would MCI nullify the request for the number which MCI previously received.

25. On February 7, 1996 I contacted a smaller RespOrg, ATL Communications, and spoke with Aelea (sp?) Christofferson. I requested that ATL Communications attempt to reserve 888-256-7766 for Genesis. Ms. Christofferson indicated that she would have all of ATL's operators attempt to do so.

26. Frustrated by my unsuccessful attempts to be provided with any assurances from the biggest RespOrgs (e.g. AT&T, LDDS) to prioritize Genesis' request for reservation of 888-256-7766, or that they would override any prior requests for the number in favor of Genesis (e.g. AT&T, MCI), and as a result of LDDS' failure in notifying me of the 888 service and replication list and its apparent refusal to submit my request for replication along with timely filed requests it received but which LDDS failed to submit to DSMI by February 1, 1996, I contacted William Noonan, MD, Esquire, of an intellectual property lawfirm in Portland, Oregon

whose services Genesis utilized in the past. I requested that Dr. Noonan send a letter on Genesis' behalf to all 156 RespOrgs on the list I had received from Michele Wade of DSMI, demanding that each RespOrg nullify any request for reservation of 888-256-7766. The letter was drafted and urgently faxed out on February 8, 1996 from Dr. Noonan's law office, during a time period when the river which runs through Portland was rising at a dangerous rate and Dr. Noonan's office building was being evacuated. Upon information and belief, not all fax transmissions were completed (e.g., some wrong numbers), however, all confirmation copies were sent out on February 9, 1996 and none were returned. A sample copy of Dr. Noonan's letter is attached hereto as Appendix A. Upon information and belief, Dr. Noonan received a variety of messages from some of the RespOrgs contacted. Some were apparently upset about being contacted and others called merely to indicate that they had not received any reservation for the 888-256-7766 number.

27. On February 8, 1996, Dr. Noonan sent a letter on Genesis' behalf to the attention of Irene Flannery at the FCC, requesting that the 800-BLOSSOM number be replicated (copy attached hereto as Appendix B). Upon further information and belief, Dr. Noonan called the FCC on February 9th to follow up and was informed that Ms. Flannery was not available to speak to him. Upon further information and belief, Dr. Noonan instead spoke with Brad Wimmer of the FCC who informed Dr. Noonan that it was too late to reserve the replication.

28. On February 9, 1996, I provided Michael Wade of DSMI with

the originals of Genesis' RespOrg application, the original Insurance Binder and a check in the amount of \$1300 at DSMI's offices at Bellcore in Piscataway, NJ. About an hour and 45 minutes later, Michele Wade of DSMI provided me with a RespOrg Smart Card to access the NASC database but she informed me that I would not be permitted to access it from DSMI's office nor could anyone at DSMI instruct me on how to reserve a number.

29. I also asked Ms. Wade that since Genesis was now a RespOrg, would she reserve 888-256-7766 for Genesis since it was my understanding that as a RespOrg, RespOrg's would be able to have their own numbers reserved first, without being subject to others accessing the number. I was informed of this by Judith Oppenheimer, an industry consultant, who indicated that RespOrg's like AT&T could have numbers they use (e.g., 1-800-COLLECT) reserved automatically in light of their status as RespOrgs. Ms. Wade responded "no." Ms. Wade also refused to provide me with a copy of the replication list even though I was standing in front of her. She indicated that the list was being FedExed to my business address in Medford, Oregon. I informed Ms. Wade that since NASC had refused to permit me to familiarize myself with the database by virtue of a tutorial until such time as Genesis' application was approved, I was now unable to establish communications access with the database, which could have been avoided if NASC was cooperative. Ms. Wade said "too bad," "good luck" and she left the room. It took one business day to correct the communications access problem.

30. About two and half hours later I arrived at the headquarters of NASC in Tarrytown, New York. I met with Ms. Janice Jones of NASC who informed me that she could not assist me in any way, including showing me how to reserve a number or to provide me access to a terminal. I requested use of a NASC terminal to access the system since I was previously denied assistance earlier in the week pending approval of Genesis' RespOrg application. I informed Ms. Jones that this was precisely the situation I intended to avoid and Ms. Jones also told me "too bad," that no one could help me now and she requested that I leave, which I did. At about 7:00 that evening I contacted Keith Meyer of NASC. I informed Keith, who had been friendly in my initial contact with him, that I was experiencing difficulty with my computer and requested that I had no way of accessing the database. Mr. Meyer refused to assist me in accessing the database and in permitting me to come to NASC's offices to access the database from one of its terminals. Mr. Meyer's only suggestion was that I get another computer from some other source.

31. From February 9, 1996 at about 5:30 p.m. until approximately 10:30 a.m. on February 12, 1996 I repeatedly tried to access the database but could not properly interface with the software and the communications system. I tried to reach NASC several times during this period, but no one from NASC returned my call until 10:00 a.m. on February 12th. In that call, NASC provided me with the proper computer settings which then permitted me to access the database. At about 10:30 a.m. on the 12th, after

being finally able to access the system, I learned that TWC Communications ("TWC") had reserved the number 888-256-7766. I also confirmed that LDDS, Genesis' carrier, was listed in the database as Genesis' designated RespOrg.

32. After I discovered TWC had reserved the number I called Aelea Christofferson of ATL Communications to discuss what I had found out. Ms. Christofferson indicated that one of her operators had noticed that when she was attempting to secure the 888-256-7766 number for Genesis on February 10th, the number was reserved by LDDS which she thought was good since she knew LDDS was Genesis' carrier. Seconds later she accessed the database again and it reflected that TWC had secured reservation of 888-256-7766, rather than LDDS. Ms. Christofferson indicated that the operator thought this was very strange.

33. About a half an hour later, I contacted TWC of Edison, New Jersey and spoke to Joe Weiss about the reservation of 888-256-7766 by TWC. Mr. Weiss' response was "Oh, the BLOSSOM number." He indicated that TWC had just become a RespOrg. I inquired as to whether his customer would be interested in selling the reservation as I had made every attempt to reserve the number. Mr. Weiss indicated that he doubted it since his customer had already prepared a business plan to use the number. I asked him if he had seen his customer's business plan and if his customer intended to engage in the flower business. He responded that "they do intend to compete in the flower business" and that if I prevent the customer from using 888-BLOSSOM, his customer would still use the

number as "they intended to take the misdials of customers trying to reach [Genesis' 800-BLOSSOM number]. He further stated that "that could be very profitable without having to advertise." I further asked Mr. Weiss why would his customer prepare a business plan when they had no assurance of getting the number until February 10, 1996. Mr. Weiss responded that they were sure they would get the number. I asked him how he could be so sure of getting the number and he responded "they had their ways." I asked him to be more specific and he became evasive. Mr. Weiss indicated that he would speak to his customer and suggested that the attorneys speak. I said that would be acceptable.

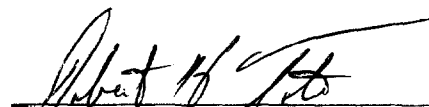
34. Later on the 12th I received a call from Sonja Coburn of LDDS who stated that LDDS did all that it could do. She was evasive and would not tell me exactly what LDDS did to try to reserve the number 888-256-7766.

35. On February 14, 1996, a letter was drafted and faxed from Genesis' legal counsel in Portland, Oregon to TWC requesting a settlement of the matter. Another letter was sent on February 16, 1996 to the attorney for TWC' anonymous client also requesting a settlement of the matter. Telephone conversations ensued from these contacts, however, to date, TWC's anonymous client refuses to settle the matter.

36. On February 15, 1996 Susie Cotter of Sprint left a message for me indicating that Sprint had made a "valiant" effort to reserve 888-256-7766 for Genesis but that somehow TWC had the number reserved first.

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The foregoing statements are true and correct to the best of my knowledge, information and belief.


Robert H. TateFebruary 26, 1996

Appendix A

KLARQUIST SPARKMAN CAMPBELL LEIGH & WHINSTON

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TECHNICAL CONSULTANTS
David J. Eap, Ph.D.
Stephen Lesavich, Ph.D.

February 8, 1996

VIA FAX (214) 690-5925

CONFIRMATION BY MAIL

Mr. Steve Tanner
Long Distance Network
1600 Promenade Center Suite 1510
Richardson, TX 75080

Re: Service Mark for 800-BLOSSOM and 888-BLOSSOM
Our Ref. No. 5037-43432/WDN

Dear Mr. Steve Tanner:

This letter is being written on behalf of Genesis Two, Inc., the owner of the service mark 800-BLOSSOM, to notify you that our client's rights in that mark will be vigorously enforced. If your company assigns or attempts to reserve the number 888-BLOSSOM or 888-256-7766 for yourself or any other party besides Genesis Two, our client plans to take all necessary and appropriate legal action. Such action may include seeking damages and injunctive relief against your company and the party to whom that telephone number may be assigned.

Genesis Two has used the telephone number 800-BLOSSOM throughout the United States and in other countries, and has invested heavily in advertising and other promotional activity related to the use of this number in association with the sale and delivery of flowers and many other gift items. Genesis Two has developed goodwill in this mark by virtue of these substantial investments, and also has filed service mark applications with the U.S. Patent and Trademark Office on the marks 800-BLOSSOM and 888-BLOSSOM. Damages from an infringing use of these marks are expected to be substantial.

It has come to our attention that a third party is attempting to reserve the mark 888-BLOSSOM or 888-256-7766 for use in an infringing manner. Use of the mark 888-BLOSSOM in

connection with confusingly similar services will be an infringement of our client's service mark rights. Assignment of the telephone number 888-7766 will also create confusion in the marketplace because of the substantial advertising by Genesis Two in connection with the 800-256-7766 telephone number. Courts have vigorously protected service mark rights in toll-free numbers because of the public confusion caused by similar alphanumeric telephone number combinations. Dial-A-Mattress Franchise Corp. v. Page, 880 F.2d 675 (2d Cir. 1989); Express Mortgage Brokers, Inc. v. Simpson Mortgage, Inc., 31 USPQ2d 1371 (E.D. Mich. 1994). Telephone companies have been required to take affirmative steps to avoid confusion by telephone customers in such cases. Vocational Personnel Services, Inc. v. Statistical Tabulating Corp., 305 F. Supp. 701 (D.C. Minn. 1969).

To avoid these legal consequences, we ask that your company nullify all requests you may have received for the number 888-BLOSSOM or 888-256-7766, other than requests from Genesis Two. If you have not or do not receive any such request from another party, you may disregard this notice.

Very truly yours,

KLARQUIST SPARKMAN CAMPBELL
LEIGH & WHINSTON, LLP



William D. Noonan, M.D.

WDN:en:db

cc: Robert Tate

CONFIRMATION COPY

The enclosed letter was faxed on February 9, 1996 to companies who may have been contacted by someone, other than Genesis Two, who was attempting to reserve the telephone number 888-256-7766. Please disregard this confirmation copy if you have not been contacted by that party.

Thank you

Appendix B

**KLARQUIST SPARKMAN
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February 8, 1996

BY FACSIMILE: 202-418-2345

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Federal Communications Commission
1919 M Street, N.W.
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FAXED

Dear Ms. Flannery:

This letter is being sent to you on behalf of Genesis Two, Inc., the owner of the service mark 800-BLOSSOM. The carrier responsible for the 800-BLOSSOM telephone number did not poll Genesis Two as recommended in your Report DC 96-3 issued January 25, 1996. The February 1, 1996 deadline for submitting requests for corresponding 888 numbers therefore passed before Genesis Two became aware of the February 1 deadline. It has now come to our attention that a third party is attempting to reserve the telephone number 888-BLOSSOM (888-256-7766) for use in a manner that will infringe the Genesis Two service mark. We therefore request that the FCC identify 888-256-7766 as a number that should be reserved for Genesis Two.

Genesis Two has used the telephone number 800-BLOSSOM (800-256-7766) throughout the United States and in other countries, and has invested heavily in advertising and other promotional activity related to use of this number. Genesis Two has developed goodwill in this mark by virtue of these substantial investments, and also has filed service mark applications with the U.S. Patent and Trademark Office on the marks 800-BLOSSOM and 888-BLOSSOM. Damages from an infringing use of these marks are expected to be substantial.

Mr. Robert Tate, president of Genesis Two, made numerous attempts to reserve the number 888-256-7766. He was given misleading or incomplete information by carriers about procedures for reserving the 888 number. Given these circumstances, the significant legal damages that will be caused by misappropriation of the mark, and the straightforward manner in which legal consequences can be avoided at this time, we ask that you designate 888-256-7766 as "unavailable" at the time reservation of 888 numbers begins on February 10.

Irene Flannery
February 8, 1996 - Page 2
Our Ref. 43232/WDN

We also ask that the FCC reconsider the process by which 888 telephone numbers were reserved. There is an inherent conflict of interest in asking carriers to poll their customers to identify subscribers who want to obtain their corresponding numbers with the 888 prefix. Responsible organizations want to have the greatest variety of 888 numbers available for new customers, which may have contributed to the inadequate or even misleading nature of the information given to some customers, such as Genesis Two. This process will inevitably lead to an extraordinary amount of litigation if 800 subscribers find their valuable service marks diluted or infringed by 888 imitators who are attempting to take advantage of the goodwill already created in the numbers by others.

Please set aside the number 888-256-7766 on behalf of Genesis Two. This simple step taken at this time could avoid expensive and prolonged legal action (including requests for damages and injunctive relief) that will become necessary if a third party misappropriates the 888-256-7766 telephone number. Please call me to confirm receipt of this request, and notify us of the action the FCC intends to take.

We are presently experiencing flood conditions in Portland, which are threatening to inundate our office building adjacent the Willamette River. I will attempt to call you on February 9 from another location if telephone service to this office is interrupted, because this matter is of the utmost urgency.

Sincerely,

KLARQUIST SPARKMAN CAMPBELL
LEIGH & WHINSTON, LLP


William D. Noonan

WDN:caf
cc: Robert Tate

CERTIFICATE OF SERVICE

I, Kathryn M. Damm, a legal and administrative assistant in the law firm of Bechtel & Cole, Chartered, certify that a copy of the foregoing EMERGENCY PETITION FOR SPECIAL RELIEF has been hand delivered or sent by Federal Express (*) this twenty-ninth day of February 1996 to the following:

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